

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

2300 PENNSYLVANIA AVENUE, LLC

Plaintiff,

V.

HARKINS BUILDERS, INC.

Defendant.

Case No. 1:10cv1321-LOG-IDD

**AMENDMENT TO PLAINTIFF'S RENEWED AND SECOND MOTION
FOR PARTIAL SUMMARY JUDGMENT**

On May 12, 2011, Plaintiff 2300 Pennsylvania Avenue, LLC (“Plaintiff” or “Owner”), by counsel, pursuant to Fed. R. Civ. P. 56, and with leave of the Court given verbally during the final pretrial conference, filed its Renewed and Second Motion for Partial Summary Judgment (the “Motion”). While the Motion’s caption, “Wherefore” clause and accompanying Memorandum, which was incorporated into the Motion, appropriately set forth the issues presented therein, Plaintiff has discovered that, through an inadvertent clerical error, the first two paragraphs of the Motion, itself, set forth language that was employed in Plaintiff’s initial Motion for Partial Summary Judgment, which was filed on or about February 10, 2011, but was not intended to be set forth in the Renewed and Second Motion. Therefore, the following two paragraphs are offered as an amendment to the Motion, in place of the first two paragraphs currently set forth therein:

Plaintiff hereby moves this Honorable Court for an order of partial summary judgment in favor of Plaintiff and against Defendant Harkins Builders, Inc. (“Harkins”), on the issues of (i)

Plaintiff's entitlement¹ to its costs for full replacement of the installed aluminum windows, which do not comply with the Contract; (ii) Plaintiff's entitlement to liquidated damages in the amount of \$637,200; and (iii) Defendant's inability to recover upon its Counterclaim.

As set forth in detail in the accompanying Memorandum, partial summary judgment should be granted in favor of 2300 and against Harkins in that, based on the undisputed facts in this case and the plain, express and unambiguous terms of the Contract: (a) Harkins is liable for the replacement costs of the Project windows in that it installed defective windows and substantially modified the same without obtaining 2300's approval and acceptance, by Change Order or other valid Modification, as expressly required by the Contract; (b) 2300 is legally entitled to liquidated damages for the delay period between the Contract Completion Date and date of Substantial Completion as certified by the Architect; and (c) Harkins is precluded, as a matter of law, from recovering the remaining Contract funds by its anticipatory breach and failure to satisfy conditions precedent to final payment.

Dated: May 12, 2011.

Respectfully submitted,

/s/ Vivian Katsantonis

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¹ Recognizing the potential for factual dispute, Plaintiff does not, through the instant Motion, presently seek a ruling as to the quantum of window replacement costs for which Harkins is liable.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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